

Memorandum

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Mr. Jim Barga

Division of Assessment Services
- R A -

Date: November 13, 1992

From : Ken McManigal

Subject: Welfare Exemption -
Foundation, 1990-91 Fiscal Year

This is in response to your request that we review Mr.
September 22, 1992, letter to you concerning 2nd
Amended 1990-91 Findings for the welfare exemption (Foundation) for properties of the following
limited partnerships:

Associates

Associates

Associates

Partners

Partners

Partners

When issuing the findings in conjunction with Revenue and Taxation Code Section 214(g), only the percentages of the values of the properties which the portions of the properties used for lower income households were of the total properties on the March 1 lien date were considered eligible for exemption. Per the letter, Mr. requests that the entire properties be found eligible for exemption:

"Please be advised, that under Internal Revenue Code Section 42, for properties to qualify to receive the low-income housing tax credits, each apartment unit must have had a qualified low income tenant residing in that unit within 12 months of the unit being placed in service. Once the unit is initially occupied, the unit remains qualified even if it is vacated as long as the unit is offered to only low income tenants. No apartment unit remains occupied every day, every year forever. All of our properties received the tax credit allocation in years

prior to 1989 and 100% of the units were leased to low income tenants within the required 12 months. Subsequently the percentage of tenant occupancy varies month to month. On any given month there will be some vacancies. However, 100% of the units are set aside exclusively for low income tenants. Thus, 100% of the units are eligible for exemption."

As you know, requirements for exemption from property taxation are not the same as requirements for exemption from federal income taxation. Nor, apparently, are they the same as those for receipt of low-income housing federal income tax credits. For eligibility for exemption from property taxation under Section 214(g), an owner of property must (A) certify and ensure that there is a deed restriction, agreement, or other legal document which restricts the project's usage and which provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, etc., and (B) certify that the funds which would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

Once these eligibility requirements are satisfied, other requirements of Section 214(g) must be met:

"(g) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property which the portion of the property serving lower income households is of the total property in any year in which any of the following criteria ((1), (2), or (3)) are applicable."

Consistent therewith then, whenever the above requirements of Section 214(g) and any of remaining criteria (1), (2), or (3) thereof are met, property shall be entitled to exemption equal to that percentage of the value of the property which the portion of the property serving lower income households is of the total property. Criteria (3), to which Mr. letter refers, is that the owner of the property is eligible

for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

As the requirements of Section 214(g) are met in these instances, as the entire properties have, apparently, been set aside and available exclusively for lower income households, and as the entire properties have, apparently, been used exclusively by lower income households, the portions of the properties serving lower income households have been the entire properties, with the result that the entire properties are eligible for exemption for the 1990-91 Fiscal Year: "portion of the property serving lower income households is of the total property." Given the statutory scheme and language, and the specific facts of availability and use exclusively for/by lower income households, we do not regard temporary lien date vacancies on the properties as events which give rise to partial losses of the exemption.

Accordingly, we recommend that you issue amended 1990-91 findings of eligibility for the entire properties, subject to confirmation by county assessors that the properties have been set aside and available exclusively for and used exclusively by lower income households.



JKM:jd/weafford

cc: Mr. John Hagerty
Mr. Verne Walton
Ms. Colleen Dottarar